

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America

Plaintiff,

v.

General Electric Company, and
InnoServ Technologies, Inc.,

Defendants.

98 1741

Civil Action No.

Entered: December 16, 1998

~~Filed: July 14, 1998~~

FILED

DEC 16 1998

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on July 14, 1998. Plaintiff and defendants, General Electric Company ("GE") and InnoServ Technologies, Inc. ("InnoServ"), by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

The essence of this Final Judgment is the prompt and certain divestiture through sale or licensing of certain rights or assets by the defendants to establish a viable competitor in the sale of service for certain models of GE diagnostic imaging equipment, in the sale of comprehensive asset-management or multi-vendor services, or in the licensing of advanced diagnostic software for use in any such service. Defendants have represented to the United States that the sale required below can and will be accomplished and that defendants will later raise no claims of

hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below.

Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against GE and InnoServ under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II.

DEFINITIONS

As used in this Final Judgment:

(A) "Diagnostic imaging equipment" means equipment that produces images of the interior of the human body used for diagnostic or therapeutic purposes in the practice of medicine.

(B) "GE" means defendant General Electric Company, a New York corporation with headquarters in Fairfield, Connecticut, its successors, assigns, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and its directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

(C) "InnoServ" means defendant InnoServ Technologies, Inc., a California corporation with headquarters in Arlington, Texas, its successors, assigns, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and its directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

(D) "PREVU diagnostic package" means the intellectual property and any other related assets owned by InnoServ as part of its proprietary advanced diagnostic service, including its PREVU remote access software, PREVU computer, and cables necessary to interface the PREVU computer to diagnostic imaging equipment for the purpose of performing on-site and remote diagnostics.

III.

APPLICABILITY

This Final Judgment applies to the defendants, and each of their successors and assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

SALE OF PREVU DIAGNOSTIC PACKAGE

(A) GE is ordered, within 180 calendar days from the date of the filing of the Complaint in this action or five days after notice of entry of this Final Judgment by the Court, whichever is later, to sell InnoServ's PREVU diagnostic package to an acquirer acceptable to the

United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to 30 calendar days, and shall notify the Court in such circumstances. GE agrees to use its best efforts to accomplish the sale as expeditiously as possible.

(B) Unless the United States otherwise consents in writing, the sale of the PREVU diagnostic package shall include the entire PREVU diagnostic package and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the PREVU diagnostic package can and will be utilized by the purchaser as a part of a viable, ongoing business. The sale, whether made by GE under this section or by a trustee under Section V, shall be made to a purchaser that, in the United States's sole judgment: (1) has the capability and intent of competing effectively, and (2) has the managerial, operational, and financial capability to compete effectively, in the sale of service for certain models of GE diagnostic imaging equipment, in the sale of comprehensive asset-management or multi-vendor services, or in the licensing of advanced diagnostic software for use in any such service. Furthermore, none of the terms of any agreement between the purchaser and GE shall give GE the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

(C) In accomplishing the sale ordered by this Final Judgment, GE promptly shall make known, by usual and customary means, the availability of the PREVU diagnostic package. GE shall inform any person making inquiry regarding a possible purchase of the PREVU diagnostic package that the package is being sold pursuant to this Final Judgment and provide that person

with a copy of this Final Judgment. GE shall offer to furnish to all bona fide prospective purchasers, subject to confidentiality assurances, all information and documents relating to the PREVU diagnostic package customarily provided in a due diligence process -- including access to personnel, inspection of the assets, and any financial, operational or other documents relevant to the sale -- except such information or documents subject to the attorney-client or work-product privileges. GE shall make available such information to the United States at the same time that such information is made available to any other person.

(D) GE shall provide to the purchaser of the PREVU diagnostic package and to the United States information relating to the personnel who have the primary responsibility for the development, maintenance, and distribution of the PREVU diagnostic package, and training thereon, to enable the purchaser to make offers of employment. GE will not interfere with any negotiations by the purchaser to employ any such person.

(E) If a sale is accomplished under this Final Judgment, GE may retain a non-exclusive, nonassignable license (without right to sublicense) to use the PREVU diagnostic package solely:

- (1) in connection with fulfilling InnoServ service contracts in effect on the date of GE's acquisition of InnoServ;
- (2) in connection with fulfilling any service contracts resulting from written proposals made by InnoServ to prospective customers that are outstanding on the date of GE's acquisition of InnoServ, provided that any such contract is entered into within 90 days of GE's acquisition of InnoServ; and

- (3) in connection with fulfilling any renewals of any service contracts described in Section IV(E)(1) or (2), so long as the renewal was entered into prior to any sale of the PREVU diagnostic package.

Such a license pursuant to Section IV(E)(1), (2), and (3) shall expire, for each such contract, on the expiration date of the contract in effect on the date that the PREVU diagnostic package is sold.

(F) Nothing in this Final Judgment shall prevent the buyer of the PREVU diagnostic package from granting GE any non-exclusive rights to use the PREVU diagnostic package in addition to those rights listed in Section IV(E), but GE shall not make any such grant of additional rights a condition of the sale.

V.

APPOINTMENT OF TRUSTEE

(A) If GE has not sold the PREVU diagnostic package within the time period specified in Section IV(A), GE shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the sale of the PREVU diagnostic package. Until such time as a trustee has been appointed, GE shall continue to use its best efforts to accomplish the sale of the PREVU diagnostic package.

(B) After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the PREVU diagnostic package. The trustee shall have the power and authority to accomplish a sale at the earliest possible time to a purchaser acceptable to the United States at the best price and on the best terms as are then obtainable upon the reasonable effort by the

trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers respecting the PREVU diagnostic package as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of GE any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the sale.

(C) GE shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by GE must be conveyed in writing to the United States and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

(D) The trustee shall serve at the cost and expense of GE, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, any remaining money shall be paid to GE, or GE shall pay to the trustee any expenses not covered by the proceeds of the sale, and the trust shall then be terminated. The compensation and expenses of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the PREVU diagnostic package and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the sale and the speed with which it is accomplished.

(E) GE shall use its best efforts to assist the trustee in accomplishing a sale. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall

have full and complete access to the personnel, books, records, and facilities relating to the assets to be sold, and GE shall develop financial and other information relevant to such assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. GE shall take no action to interfere with or to impede the trustee's accomplishment of a sale. GE shall permit bona fide prospective purchasers of the assets to have reasonable access to personnel and to make such inspection of any and all financial, operational, or other documents and other information as may be relevant to a sale under this Final Judgment.

(F) After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish a sale or license (as provided in V(G)-(H)) under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire or license, expressed an interest in acquiring or licensing, entered into negotiations to acquire or license, or was contacted or made an inquiry about acquiring or licensing, any interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to sell or license the PREVU diagnostic package.

(G) If the trustee has not accomplished a sale of the PREVU diagnostic package within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (i) the trustee's efforts to accomplish a sale, (ii) the reasons, in the trustee's judgment, why a

sale has not been accomplished, and (iii) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter an order either:

- (1) extending the trust and the term of the trustee's appointment to sell the PREVU diagnostic package by a period that is reasonable in light of the trustee's earlier efforts and any additional efforts that the Court believes can reasonably be made to sell the PREVU diagnostic package; or
- (2) directing the trustee to proceed with licensing the PREVU diagnostic package pursuant to Section V(H).

(H) Upon entry of an order by the Court pursuant to Section V(G)(2) directing the trustee to license the PREVU diagnostic package, or upon the expiration of any extended period for the sale of the PREVU diagnostic package ordered by the Court pursuant to Section V(G)(1), the trustee shall, for one year, offer perpetual, fully paid-up (at a reasonable royalty rate), non-exclusive licenses to the PREVU diagnostic package to any interested service providers of diagnostic imaging equipment. The rights granted to such licensees shall include the perpetual right to use, copy, and sublicense the PREVU diagnostic package and to make and copyright derivative works from it. The trustee shall advertise the availability of such non-exclusive licenses in at least one national general circulation newspaper and one medical diagnostic imaging equipment trade publication, which publications shall be approved by the United States. GE shall

pay for all expenses reasonably incurred by the trustee in its attempts to license the PREVU diagnostic package under this section. The trustee shall promptly notify the United States and GE of any persons who acquire a license under this section.

(I) If the trustee sells the PREVU diagnostic package, the trust will terminate when the trustee has fulfilled all its duties regarding the sale. Otherwise, at the end of the one-year licensing period, the trustee shall promptly file with the Court a report setting forth: (i) the trustee's efforts to license the PREVU diagnostic package, (ii) the name, address, and telephone number of each person who acquired a license, made an offer to license, expressed an interest in licensing, entered into negotiations to license, or was contacted or made an inquiry about licensing, any interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person, and (iii) the trustee's recommendations about whether the trustee's continuing to license the PREVU diagnostic package would serve the public interest. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter an order either:

- (1) extending the trust and the term of the trustee's appointment to license the PREVU diagnostic package by a period that is reasonable in light of the trustee's earlier efforts and any additional benefits to the public interest that the Court believes would result from continuing attempts to license the PREVU diagnostic package; or

- (2) terminating the trust.

VI.

NOTIFICATION

(A) Within two business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect any proposed sale pursuant to Sections IV or V of this Final Judgment, GE or the trustee, whichever is then responsible for effecting the sale required herein, shall notify the United States of the proposed sale. If the trustee is responsible, it shall similarly notify GE. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the PREVU diagnostic package, together with full details of the same.

(B) Within 15 calendar days of receipt by the United States of such notice, the United States may request from GE, the proposed purchaser or purchasers, any other third party, or the trustee (if applicable) additional information concerning the proposed sale and the proposed purchaser or purchasers, and any other potential purchaser. GE and the trustee shall furnish any additional information requested from them within 15 calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within 30 calendar days after receipt of the notice or within 20 calendar days after the United States has been provided the additional information requested from GE, the proposed purchaser or purchasers, any third party, and the trustee, whichever is later, the United States shall provide written notice to GE and the trustee, if there is one, stating whether or not it objects

to the proposed sale. If the United States provides written notice that it does not object, then the sale may be consummated, subject only to GE's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a sale proposed under Section IV or Section V shall not be consummated. Upon objection by GE under Section V(C), a sale proposed under Section V shall not be consummated unless approved by the Court.

VII.

FINANCING

GE shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII.

PRESERVATION OF ASSETS

Until any sale under this Final Judgment has been accomplished:

(A) GE shall preserve the PREVU diagnostic package in its existing condition and shall take no action with respect to the PREVU diagnostic package to cause any deterioration in the value of, or to deter any person from buying or licensing, the PREVU diagnostic package.

(B) GE shall continue to license, on reasonable terms, the PREVU diagnostic package to the persons who are licensees on the date of GE's acquisition of InnoServ.

(C) GE shall not, except as part of a divestiture approved by the United States, sell any part of the PREVU diagnostic package.

(D) GE shall appoint a person or persons to oversee the PREVU diagnostic package, and who will be responsible for GE's compliance with this section.

IX.

AFFIDAVITS

(A) Within 20 calendar days of the filing of the Complaint in this action, and every 30 calendar days thereafter until the sale has been completed under Section IV or V, GE shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding 30 days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts GE has taken to solicit a purchaser for the PREVU diagnostic package and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by GE, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

(B) Within 20 calendar days of the filing of the Complaint in this action, GE shall deliver to the United States an affidavit that describes in reasonable detail all actions GE has taken and all steps GE has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. GE shall deliver to the United States an affidavit describing any changes to the efforts

and actions outlined in GE's earlier affidavit(s) filed pursuant to this section within 15 calendar days after the change is implemented.

(C) Until one year after a sale has been completed or, if a sale is not completed, one year after the trust under Section V is terminated, GE shall preserve all records of all efforts made to preserve, sell, and license the PREVU diagnostic package.

X.

COMPLIANCE INSPECTION

(A) For the purposes of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to GE, be permitted:

- (1) access during GE's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or control of GE, which may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, GE's officers, employees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to GE's reasonable convenience and without restraint or interference by GE.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, GE shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section or Section IX shall be divulged by the United States to any person other than a duly-authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by GE to the United States, GE represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and GE marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 calendar days notice shall be given by the United States to GE prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which GE is not a party.

XI.

RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XII.

TERMINATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten years from the date of entry.

XIII.

PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Date: 12-16-98

Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16


United States District Judge